

JAPANESE LAW GOVERNING FOREIGN FISHING VESSELS

There is no domestic law in Japan, governing the territorial sea. A note of 5 March 1956 received by the United Nations from the Minister of Foreign Affairs expressly states:¹

Among the Japanese national legislative texts there is none defining the breadth and delimitation of the territorial sea. ... It is, however, evident that Japan traditionally maintains that the distance of three miles is the well recognized and firmly established principle of international law as expressed in Article 1 of the Convention between Japan and the United States of America respecting the Regulation of the Liquor Traffic of 1928 ...

¹/ UN, "Laws and Regulations on the Regime of the Territorial Sea," United Nations Legislative Series, ST/LEG/SER. B/6, p. 6. The Japanese Government officially stated in its letter of November 29, 1928 to the Preparatory Committee for the Codification of International Law: "(a) Japan has maintained the limit of three nautical miles for territorial waters, as is clear from her declaration of neutrality at the time of the Franco-Prussian War of 1870, from the decisions in the cases of the S. S. 'Michael' and S. S. 'Russia' at the Sasebo Prize Court in 1894-95 ... (e) (3) it is advisable not to entitle any state to exercise any special rights outside its territorial waters." Ibid. It may be observed, however, that during the Franco-Prussian War, Japan's neutrality zone did not remain limited to three miles as the letter states, but was extended to three ri or the range of a cannon-shot, according to Jessup, i.e., about six miles. See Philip C. Jessup, The Law of Territorial Waters and Maritime Jurisdiction (New York: G. A. Jennings Co., 1927), p. 46. Professor Zengo Ohira pointed out in his article that "Japan has never attempted any control of fishing beyond the limit of her territorial waters and has observed the three-mile principle of territorial waters when foreign vessels approached Japanese waters in pursuit of whaling operations." Ohira, *Nichi-So gyogyô no kokusaihô shiteki gaikan* [The Fishery Problem between Soviet Russia and Japan], The Journal of International Law and Diplomacy, LVII, (1958), p. 226.

On the subject of Japanese legislation prohibiting foreign vessels from fishing within the territorial sea, the Regulation for the Control of Fisheries in Hokkaidô, issued by the Prime Minister, was in force in 1876.^{2/} It was originally intended to prevent foreign vessels from hunting fur seals and sea otters in the territorial waters of Hokkaidô and its neighbouring islands. The Regulation consisting of three articles provided:^{3/}

1. No foreign vessel shall be permitted to catch or hunt sea fish and animals by means of fishing tackle, nets or guns, etc. in waters within the distance of a cannon ball shot from the coast off any place in Hokkaido and its neighbouring islands under the control of the Japanese Empire.^{4/}
2. When there is the fear that a foreign fishing vessel may violate the above provision, a Japanese fishery investigating officer shall order the ship to leave. However, when he deems that it has already violated the same, he shall board the said ship and inspect its cargo.

^{2/} This was a result of the conclusion of the Treaty of Exchange of Saghalin and the Kurile Islands in 1875 under which Japan obtained the possession of the whole Kurile group including Choumcheu. Ibid. It is not known how long the above Regulation was in force. However, see the Prime Minister's Order No. 16, May 23, 1914.

^{3/} Fusakichi Katayama, Dai-Nihon suisanshi [The History of Japanese Fishery] (Tokyo: Nôgyô to Suisansha, 1937), p. 459.

^{4/} According to Professor Ôhira, this distance is three miles from the coast. Ôhira, The Journal of International Law and Diplomacy, LVII (1958), p. 226.

3. When any foreign vessel has violated the provision of Article 1, or refused to obey an order to leave or to allow the inspection of its cargo as set forth in Article 2, the investigating officer shall have the said ship anchored at the nearest port under the custody of the consul of the country to which the ship belongs, and shall ask the consul to punish the culprit with a substantial penalty.

At present, there is no specific law prohibiting foreign vessels from fishing within the territorial sea as evidenced by the following Maritime Police Notice of 1951 entitled "Fishing Operations by Foreign Vessels Invading Japanese Territorial Waters":^{5/}

In view of the fact that Korean fishing boats (shark) have recently engaged in fishing operations around the Tsushima Island after invading our territorial waters, an appropriate measure to control them is under discussion by the authorities concerned. At the present time, the fact that foreign fishing vessels which trespassed in our territorial waters and engaged in fishing operations does not constitute a violation of the Alien Registration Law.^{6/} Nor does any law govern this problem. Should such incidents occur again in the future, inspection and search should be strictly conducted on the spot. The utmost caution is urged lest such trespassing be used as a means of secret passage and smuggling. At the same time, it is urged that a special effort be made to have them withdraw from our territorial waters.

^{5/} Notice No. 135, Maritime Police Bureau, Kaijō hoan hōreishū [Collection of Laws and Regulations relating to Maritime Security], v. 8, 1952, p. 1090.

^{6/} Law No. 125, Apr. 28, 1952.

It appears that without domestic legislation governing the subject, Japan observes the three-mile limit as a reserved fishing zone for her own nationals.^{7/} Nevertheless, a fishing license may be granted to an alien who wishes to fish within Japanese territorial waters under the provision of the Fishery Law, which does not contain any special provisions prohibiting aliens from so doing.^{8/} Mr. Katayama was of the opinion that "the application of the Fishery Law to aliens should be determined by the terms of a treaty (of commerce, navigation, etc.) or a law and the government policy of the contracting countries, if there is any provision to this effect."^{9/} He pointed out that in the absence of such a treaty, however, it should be decided according to each particular case. He concluded that "even if a license is granted to aliens, the issuing authorities may restrict or prohibit the use of the license, or revoke it at its own discretion whenever it is deemed necessary ..."^{10/}

^{7/} C. John Colombos, The International Law of the Sea (London: Longmans, Green and Co., 1959), p. 130.

^{8/} Law No. 267, Dec. 15, 1949 as amended by Law No. 128 and 235, 1961. See Japan. Ministry of Foreign Affairs, Nihon ni okeru ippan gaikokujin no kokunaihôjô no chii (The Status of Aliens Residing in Japan under Domestic Law), 1953, p. 133.

^{9/} Fusakichi Katayama, Gyogyôhō [The Fishery Law], (Tokyo: Suisansha, 1942), p. 23. See also Ide Masataka, Gyogyôhō [The Fishery Law] (Tokyo: Nihon Hyoron Sha), 1943, p. 25.

^{10/} Katayama, Gyogyôhō, p. 23.

Under the provisions of Articles 10 and 15^{11/} of the Fishery Law, local governments are empowered to issue licenses and enact local ordinances regulating fishing. However, it is construed that these local ordinances are not applicable to operations by foreign fishing boats outside the territorial sea.^{12/}

Although there is no law regulating exclusive fishery zones established beyond the three-mile limit, so-called prohibited zones of dragnet fishing have been established by local government ordinances. In this respect, Professors Taoka Ryôichi and Tabata Shigejirô stated:^{13/}

The prohibited zones of dragnet fishing, which have been established by prefectural governments for the purpose of protecting species of fish, sometimes extend to 7 or 10 miles from the coast. They were, however, not created by treaty, but by domestic law on a local basis. Therefore, these local ordinances will not be enforced against foreign vessels beyond the three-mile limit ...

They went on to say that "since few foreign fishing vessels approach the seas adjacent to Japan, no serious inconvenience is likely to occur at present. If many foreign ships come often to the

^{11/} See Appendix.

^{12/} Maritime Police Notice No. 477, Oct. 9, 1951 entitled "Application of the Fisheries Control Regulations of To, Do, Fu or Ken (Metropolis, Province and Prefecture)." See also Art. 1 and 8 of the Criminal Code.

^{13/} R. Taoka and S. Tabata, Kokusaihô kôwa [Lecture on International Law], (Tokyo: Yûshindô), 1950, p. 96.

neighbouring seas for fishing purposes in the future, it will be necessary to establish a 'contiguous zone' as far as the problem of the prohibited zones of dragnet fishing^{14/} is concerned."

Throughout the UN Conferences on the Law of the Sea in 1958 and 1960, Japan remained one of the "staunchest upholders of the three-mile limit."^{15/} The up-to-date position of Japan was spelled out in the statement made by Ambassador Matsudaira before the plenary meeting on 10 December 1958 on the question of convening a second UN Conference on the Law of the Sea. He declared that:^{16/}

We maintain our position:

1. My Government believes that the three-mile limit is the only established rule in the body of international law. Any extension of the breadth of territorial seas could be made only when it is generally, expressly, and specifically recognized and accepted by all nations.

2. Any extension of the breadth of territorial seas could become invalid unless it were realized through a convention or an agreement. Neither a unilateral act nor a municipal law could have any legal effect under international law, as such. Any such action, we feel, is nothing but an attempt for unilateral acquisition of the common property of mankind. It is undoubtedly against law.

3. Japan recognizes no exclusive fishing limits outside the territorial seas.

^{14/} Ibid.

^{15/} Philip C. Jessup, "The Law of the Sea around Us," A. J. I. L. LV (1961), p. 105.

^{16/} U. N. G. A. XIII (1958), Ors. Sixth Committee, Summary Records of Meetings, 10 Dec. 1958.

In the conference of 1958, Japan was one of the nations which voted against the Convention on the Continental Shelf of 1958.^{17/}

The problem with which present-day Japan is confronted is not the regulation of foreign fishing vessels within its territorial waters as few ships approach the coast of Japan. It lies rather in trespassing Japanese fishing boats on the territorial seas or the alleged exclusive fishery zones of neighbouring countries. Actually, all the states bordering on the Pacific have complained about Japanese encroachment on their fishing grounds, and have taken restrictive measures.^{18/} It is, then, quite obvious that it is largely Japan's interest in fishing on the high seas which has dictated its policy with regard to territorial seas.

^{17/} Arthur Dean, "The Second Geneva Conference of the Law of the Sea: The Right for Freedom of the Sea," Ibid., LIV (1960); Richard Young, "Sedentary Fisheries and the Conference on the Continental Shelf," Ibid., LV (1960); Shigeru Oda, "Japan and the United Nations Conference on the Law of the Sea," The Japanese Annual of International Law, No. 3 (1959), p. 86.

^{18/} Countries which have had frequent difficulties with the fishing interests of Japan include: Malaya, El Salvador, Panama, South Korea, Communist China, Australia, and the United States.

A P P E N D I X

The Fishery Law of Japan

Art. 10. Any person who intends to have a fishery right created shall file an application for the grant with the governor of To, Do, Fu or Ken (Metropolis, Province or Prefecture) therefor.

Art. 65. The competent Minister or the governor of To, Do, Fu or Ken may, for the purpose of propagation and protection of aquatic animals and plants, fisheries supervision or other fisheries adjustment, issue necessary Ministerial Ordinances or regulations concerning the following items:

- (1) Restriction or prohibition relating to gathering and taking aquatic animals and plants;
- (2) Restriction or prohibition relating to sale or possession of aquatic animals and plants or products therefrom;
- (3) Restriction or prohibition relating to fishing gears or fishing boats;
- (4) Restriction relating to the number or qualification of fisheries operators;

- II. Necessary penal provisions may be stipulated in the Ministerial Ordinances or regulations as prescribed in the preceding paragraph.
- III. The penalties which may be stipulated in the penal provisions as mentioned in the preceding paragraph shall be, in case of the Ministerial Ordinances, penal

servitude for a period not exceeding two years, a fine not exceeding fifty thousand yen, detention or minor fine, or concurrent imposition, and in the case of regulations, penal servitude for a period not exceeding six months, a fine not exceeding ten thousand yen, detention or minor fine, or concurrent imposition.

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